

NPP shackles itself by suing President Mahama



Now that the NPP leaders have submitted their petition to the Supreme Court to demand the declaration of their defeated flagbearer, Akufo-Addo, as winner of Election 2012, they seem to have made good their threat to pursue their claims of electoral malpractices to the full. They can now congratulate themselves as successful lawyers and politicians who know how to follow the due process to achieve victory.

By that action, they have jumped a major hurdle on their way toward reassuring their followers that they are good warriors who know how to fight their cause. They know how to buy time.

According to their petition, on 10th December, 2012, the Chairman issued C.I. 80 setting out The Declaration of President-Elect Instrument 2012 in which the NDC presidential candidate, John Dramani Mahama, was declared the first-round winner of the election. C.I 80 was notified in the Gazette on 11th December, 2012.

It stated the respondents to the petition as the President-Elect, John Dramani Mahama, the person, according to the Rules of the Court, whose election is challenged by the petition; and the Electoral Commission, whose conduct is the subject of the complaint in the petition.

The overarching objective of the petition is for the Supreme Court to declare Akufo-Addo as the winner of the Presidential elections. The petitioners are even not asking for a re-run of the elections.

On the surface, however, we can easily tell that the NPP's suit has three main objectives: to create the impression that President Mahama is complicit in the electoral malpractices and must be dragged to court to answer why; to create instability in his political life and frustrate him in exercising his powers as the President; and to simply divert attention from themselves to an external body as the cause of Akufo-Addo's electoral woes.

We know that the NPP has attached President Mahama in his capacity as the President-elect, suggesting that he is not being cited in his capacity as the occupant of the highest office of the land but as an ordinary Presidential Candidate who contested the elections with the other seven candidates at Election 2012.

So, we may see it as his being sued in his private capacity and not as a public official occupying the Presidency. I have no doubt that these NPP litigants know why they chose this route. This is a huge precedent in this country.

Certainly, if President Mahama has to set aside his official duties to be in the chamber of the Supreme Court any time that the case is to be heard, we can tell how disruptive that is to his performance as Head of State. We do so in the context of suggestions by some NDC lawyers (Chris Ackumey, for instance) that the President must defend himself in court.

I want to concentrate on only one aspect of this case to explain how (from a layman's perspective alone) the NPP leaders have set themselves up for an arduous, protracted, and vexatious litigation. Contrary to the optimism that the petitioners and their followers have

already expressed about the outcome of this case, the intricacies of the case itself suggest otherwise. The case has not yet begun being heard, so we can comment on it without any fear of being cited for contempt of court at this initial stage.

Attaching the Electoral Commission to the suit is not strange because that is the statutory body mandated by the Constitution to organize and supervise the elections with all the resources at its disposal (both material and human). And it is the government's responsibility to equip it for such responsibilities.

On that score, is President Mahama being sued together with the EC because the NPP leaders are aggrieved that he either starved the EC of the resources needed to conduct free, fair, and transparent general elections or by usurping its legitimate functions to win an advantage? Certainly not.

So, why include the President (seen here both in his capacity as the substantive caretaker President to complete the full four-year term of his late predecessor on January 6, 2013, and as the President-elect, waiting to be inaugurated into office on January 7, 2013, to begin a full four-year term on his own)?

We are asking so because the case will not be tried according to only the NPP petitioners' documents, sentiments, speculation, personal emotions, inclinations (or disinclinations), and dispositions (or pre-dispositions). It will be based on raw facts and evidence, which makes it incumbent on the petitioners to brace themselves up for grilling.

We are even not talking about the implications of Article 57 (5) of the Constitution, which states that The President shall not, while in office as President, be personally liable to any civil or criminal proceedings in court. If the NPP leaders knew the implications yet went ahead to sue him, it must be their own cup of tea.

The NPP leaders have been dangling documents (blue, white, or red sheets) and presenting them as the incontrovertible evidence to buttress their allegations of electoral malpractices. That's the basis of their self-confidence that once their tabulation of figures has yielded over 1.3 million votes as the crux of irregularities (and what should have gone to Akufo-Addo), the Supreme Court will look favourably into their petition. Many questions have already been raised about this over-voting or tampering of votes and I will not belabour it.

But what these NPP leaders have failed to handle is the aspect of their petition that touches on President Mahama and the allegation of his deep involvement in the electoral malpractices. They have imposed a tall order on themselves and must be ready for the Sisyphean burden awaiting them.

Here is what I consider the onerous tasks facing them: they will have to prove to the Supreme Court the extent to which President Mahama directly or indirectly participated in the malpractices. So, the usual journalistic 5 W's and H will pop up for them to convincingly answer in proving President Mahama's complicity.

These are the main questions that the NPP petitioners should busy themselves seeking answers for even before the Supreme Court begins sitting on their case:

The WHO question

The who part is obviously President Mahama, so we rule it out. Even then, the NPP petitioners will have to prove whether he did the acts all by himself or was assisted by other accomplices. This is where the burden of proof thickens.

The WHAT question

What exactly did President Mahama do to confirm that he did participate in the electoral malpractices that denied Akufo-Addo victory? And here, the what provokes many other questions in terms of acts of commission and omission.

The WHERE question

Where exactly did President Mahama do those acts? Again, there will be many other questions for the NPP petitioners to answer as to whether President Mahama was physically present at any location (polling station) to mastermind and to directly participate in what they have accused him of. To the best of my knowledge the only polling station that he was physically present at was the one in the Bole-Bamboi constituency where he voted on December 7. Those making the allegation will have to prove to the court where else they saw him.

Another issue here is whether the President was at any point where the results were being collected, collated, tallied, certified, and released by the designated officials responsible for the elections. Again, the petitioners will have to prove whether in the transmission of those results, President Mahama was anywhere in the line of action to be able to influence the tampering of the results in his favour.

At the time that the results were being faxed, where was President Mahama and what role did he directly or indirectly play (physically, spiritually, or metaphysically) to accomplish what the petitioners have accused him of doing.

The WHEN question

When exactly did President Mahama do any of those electoral malpractices? Here too, many sub-questions will arise for these NPP petitioners to answer as to whether President Mahama did what they've accused him of at night, during the day or before voting day or thereafter.

The WHY question

Why exactly did President Mahama do those malpractices can be easily answered to say that he did so to win the elections. But that will be simplistic. Unless the other questions can be sufficiently answered, a mere statement implying that he negatively influenced the electoral process to favour him will not suffice.

The HOW

How exactly did President Mahama do the electoral malpractices? This question will also provoke others that the petitioners will need to answer sufficiently to prove President Mahama's complicity. Did he negatively influence the balloting and its outcome remotely or immediately? By what means (electronic, witchcraft, inducement of the election officials through bribery, physically intimidating them, or influencing them by other means, for instance)?

The Implications

These questions will definitely constitute a major chunk of the proceedings and the NPP petitioners have the Herculean task of identifying all those elements to drive their arguments. At this point, it must be made clear to all and sundry that the mere dangling about of documents won't be the be-it-all-and-end-it-all in this case.

The Supreme Court will even ask searching questions about those documents that I will not want to go into at this stage that the case hasn't even been listed for hearing. With time, we will identify some of those questions and raise as we continue to monitor the situation and discuss its pertinence.

The point must be clear by now that the petition that the NPP has filed at the Supreme Court has many deeper level issues than all this ugly noise about documents and figures being tampered with. As to how the NPP's own vigilant party agents at the various polling stations

functioned or malfunctioned to allow for the electoral malpractices being fought against, it is clear that the NPP leaders will have a heavy responsibility explaining that aspect too.

The fact is that all over the polling stations and constituency vote collation centres, these agents appended their signatures to the blue, white, or red sheets to confirm the authenticity of the results before they were transmitted to the EC's Regional and national headquarters for further scrutiny, certification and release as the true reflection of the voters' will.

Where do these NPP petitioners place their own party agents in this conundrum? I will leave this aspect to them to sort out because how they handle this matter will definitely shape and shave how these party agents perform at Election 2016 and beyond. I can stick my neck out to say that by their repudiation of the results, these NPP leaders have already impugned the integrity of their own party agents and demoralized them to such an extent as to kill their party spirit.

Where is the assurance that those to be engaged for Election 2016 will not suffer a similar or worse fate? Undeniably, these party agents are also very important agents for improving our democracy and must not be so discredited as to weaken that link in the chain. I will take this matter up in a subsequent opinion piece.

Tying up the loose ends of my discussion, then, let me point it out to these NPP petitioners and their docile followers that their petition will take them through a rough roller-coaster ride with devastating traumatic emotional, psychological, and political career-denting experiences. I wonder, though, if by choosing to complicate the matter this way, they are not just using it as a smokescreen behind which to hide eventually exit unscathed.

They are certainly afraid of their own supporters and will use any escape route of their own devising to avert that anger. After all, they have hyped up these supporters' expectations to the boiling point and must adroitly find the means to escape now that the inauguration of their arch-nemesis at the Presidency is in sight. They can't stop it, which is why anything to massage feelings must be done.

Having sustained those high hopes by continuously piling up lies upon lies all the way to the dark chambers of the Supreme Court, they can now sit back to find solace in their schemes and blame everything on the Court.

That's their exit strategy. But they can't implement it without roping in President Mahama, knowing very well that proving his complicity will be the cul-de-sac into which the case will be pushed. At that moment, then, EUREKA!! An escape route will be opened for them to vanish into thin air. Let the Supreme Court carry the blame, they will definitely say. We wait for more of the Concert Party show to unfold.

I shall return

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Story from Modern Ghana News:

<http://www.modernghana.com/news/437567/1/npp-shackles-itself-by-suing-president-mahama.html>

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